

Before the Administrative Hearing Commission State of Missouri

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|----------------------------------|---|----------------|
| MISSOURI REAL ESTATE COMMISSION, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | No. 12-0218 RE |
| |) | |
| LOUIS G. VAN DRIE, JR., |) | |
| |) | |
| Respondent. |) | |

DECISION

The real estate broker license of Louis G. Van Drie, Jr., is subject to discipline because Van Drie failed to respond to written requests from the Missouri Real Estate Commission (“MREC”) and failed to surrender his suspended license.

Procedure

The MREC filed a complaint on February 8, 2012, seeking this Commission’s determination that cause exists to discipline Van Drie’s real estate broker license. Van Drie did not file an answer. However, at Van Drie’s request, we continued the hearing twice.

This Commission convened a hearing on the complaint on June 3, 2013. Assistant Attorney General Ross Brown represented the MREC. Van Drie did not appear and was not represented by counsel. The matter became ready for our decision on June 25, 2013, when the transcript was filed.

At the hearing, the Board presented the affidavit of Janet Carder, its executive director and custodian of records, and authenticated copies of correspondence between the parties. The following facts, based on that evidence, are undisputed.

Findings of Fact

1. At all relevant times, Van Drie held a Missouri license as a real estate broker. The license was suspended on October 30, 2011.

2. At all relevant times, Van Drie's last registered address with the MREC was 2935 East Alfalfa Drive, Columbia, Missouri, 65203 ("registered address").

3. On or about August 12, 2010, the MREC sent a letter by both certified and regular mail to Van Drie's registered address, informing him that the MREC had been notified he was not in compliance with § 324.010 RSMo, and his license would be suspended by operation of law on October 30, 2010, unless he resolved a noncompliance issue with the Department of Revenue.

4. On or about November 9, 2010, the MREC sent a letter by both certified and regular mail to Van Drie's registered address, informing him that his real estate broker license was suspended by operation of law for failing to comply with § 324.010 RSMo. The letter further informed Van Drie he was to return his license to the MREC within ten days of the date of the correspondence, and to close his brokerage office.

5. On or about January 12, 2011, the MREC sent a letter by both certified and regular mail to Van Drie's registered address, informing him that failure to respond to the MREC's correspondence was a violation of 20 CSR 2250-8.170(1), and providing Van Drie with an additional thirty days within which to return his license and close his brokerage.

6. Although Van Drie received the MREC's letters sent August 12, 2010, November 9, 2010, and January 12, 2011, he responded to none of them.

7. Van Drie did not surrender his real estate license.

Conclusions of Law

We have jurisdiction over the MREC's complaint. Section 621.045.¹ The MREC has the burden of proof. *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

The MREC alleges in its complaint that there is cause to discipline Van Drie's license under § 339.100.2, which provides in relevant part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

* * *

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

* * *

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

At the hearing, we allowed the MREC to withdraw its allegation that Van Dries is subject to discipline under § 339.100.2(19); accordingly, we do not consider that allegation.

¹ Statutory references, unless otherwise noted, are to the RSMo Supp. 2012.

Section 324.010 requires the Director of Revenue to send notice to licensing entities such as the MREC when licensees are delinquent or have failed to file their state taxes. We infer that the MREC received such a notice from the Director of Revenue regarding Van Drie. Then, “[i]n the case of such delinquency or failure to file, the licensee’s license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy.” *Id.*

Subdivision (15) – Violation of Law or Regulations

Regulation 20 CSR 2250-8.170(1)² provides:

(1) Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission’s written request or inquiry, mailed to the licensee’s address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

Finally, 20 CSR 2250-8.155(2)(A)3 states:

(2) Revocation/Suspension:

(A) . . . Upon the revocation or suspension of an individual broker . . . the individual broker shall—

* * *

3. Notify all licensees associated with the brokerage of the revocation/suspension and return all licenses held by the broker to the commission.

The limited facts before us do not disclose the exact nature of Van Drie’s noncompliance issue with the Department of Revenue, but we do know Van Drie did not respond to any of the three letters sent by the MREC to his registered address. There is a presumption that a letter duly

² All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

mailed has been received by the addressee. *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App., E.D. 2000), citing *Ins. Placements, Inc. v. Utica Mut. Ins. Co.*, 917 S.W.2d 592, 595 (Mo. App., E.D.1996). Van Dries did not rebut the presumption here. We find that he received the letters, two of which requested Van Dries to return his license to the MREC. His failure to respond to the MREC's written requests violated 20 CSR 2250-8.170(1) and 20 CSR 2250-8.155(2)(A)3, and is grounds for discipline under § 339.100.2(15).

Subdivision (16) – Grounds for Refusal to Issue a License

The MREC contends that Van Drie's failure to timely respond to the MREC's letters and surrender his license would be grounds for the MREC to refuse to issue a license. Section 339.040.1 provides:

1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that they:
 - (1) Are persons of good moral character; and
 - (2) Bear a good reputation for honesty, integrity, and fair dealing; and
 - (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Board. of Regis'n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997). Van Drie's failure to respond to the MREC's inquiries, while inconsistent with proper practice, is not so egregious as to show a lack of good moral character.

“Reputation” means “the estimation in which one is generally held : the character commonly imputed to one as distinct from real or inherent character [.]” WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1929 (unabr. 1986). Reputation is not a person's actions; it is “the general opinion . . . held of a person by those in the community in which such

person resides[.]” *State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black’s Law Dictionary, Rev. 4th Ed., p. 1467-68). Reputation is “a consensus view of many people.” *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992). The MREC presented no evidence as to Van Drie’s reputation.

Competence, when referring to occupation, is “the actual ability of a person to perform in that occupation.” *See* § 1.020(9). In *Albanna v. State Bd. of Regis’n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. banc 2009), the court described incompetency as a “state of being” amounting to an inability or unwillingness to function properly. The *Albanna* court said that the evaluation necessitates a broader-scale analysis, taking into account the licensee’s capacities and successes. *Id.* The MREC sent three letters to Van Drie, two of which asked for a response. His failure to respond to those requests could be part of a larger pattern, but it is not enough, by itself, to show a general unwillingness on Van Drie’s part to function properly as a real estate professional. The MREC has failed to show that Van Drie is incompetent to transact the business of a broker in such a manner as to safeguard the interest of the public.

Accordingly, we find no cause for discipline under § 339.100.2(16).

Summary

Van Drie’s real estate broker license is subject to discipline under § 339.100.2(15).

SO ORDERED on June 27, 2013.

/s/ Karen A. Winn

KAREN A. WINN
Commissioner